OCT 28 1980

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-325

JEAN T. RADOMSKI, also known as Jean T. Knight,

Petitioner,

vs.

WILLIAM B. KNIGHT, as Special Guardian of William Austin Knight, and William Austin Knight, his ward,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR PETITIONER IN REPLY

CHARLES BRYAN BURTON
Attorney for Petitioner

LAW OFFICES OF CHARLES B. BURTON
The Plaza Del Sol
4621 North 16 Street
Suite A-110
Phoenix, Arizona 85016

(602) 264-2978

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-325

JEAN T. RADOMSKI, also known as Jean T. Knight,

Petitioner,

vs.

WILLIAM B. KNIGHT, as Special Guardian of William Austin Knight, and William Austin Knight, his ward,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR PETITIONER IN REPLY

CHARLES BRYAN BURTON
Attorney for Petitioner

LAW OFFICES OF CHARLES B. BURTON
The Plaza Del Sol
4621 North 16 Street
Suite A-110
Phoenix, Arizona 85016

(602) 264-2978

TABLE OF CONTENTS

	Page
Introduction	1
Arguments:	
I The Supreme Court has jurisdiction to grant certiorari in this case based on the record below.	2
II The Supreme Court has inherent jurisdiction in a case where injustice might otherwise result should review not be granted.	5
III There exist special and important reasons why the writ should be granted.	7
IV Respondents' brief contains irrelevant and immaterial matter and should be disregarded and stricken by the court.	9

APPENDIX

Appendix A - Excerpts from the transcript of oral argument before the Supreme Judicial Court of the State of Maine sitting as the law of the court.

TABLE OF AUTHORITIES

Cases Cited: Page

Boynton v. Virginia
364 U.S. 454 (1960) 5

Cardinale v. Louisiana
394 U.S. 437 (1966) 2

Estate of Wilson v. Aiken Industries
439 U.S. 877 (1928) 2

Glidden Company v. Zdanok
370 U.S. 530 (1962) 5

Hill v. California
401 U.S. 797 (1971) 2

Hormel v. Helvering
312 U.S. 552 (1941) 5,6

Younie v. State
281 A.2d 446 (1971) 6

STATUTES AND RULES OF COURT CITED

	Page
28 U.S.C. § 1257(3)	2
28 U.S.C. § 2403(b)	2
Rule 17 U.S. Sup. Ct. R.	1
Rule 22.1 U.S. Sup. Ct. R.	9,10
Rule 34.6 U.S. Sup. Ct. R.	9,10

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-325

JEAN T. RADOMSKI, also known as Jean T. Knight,

Petitioner,

v.

WILLIAM B. KNIGHT, as Special Guardian of William Austin Knight, and William Austin Knight, his ward,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR PETITIONER IN REPLY

INTRODUCTION

Respondents, in their Brief for Respondents in Opposition, alleged that this Court is without jurisdiction to hear this case, as it involves a federal constitutional attack on a state statute, an issue not raised below.

Respondents further claim that Petitioner has wholly failed to sustain her burden of establishing under Rule 17 that there are special and important reasons why the writ should be granted.

For the reasons set forth below and in Petitioner's Petition for Writ of Certiorari, Petitioner respectfully requests this Court to issue a writ of certiorari to review the judgment and opinion of the Supreme Judicial Court of Maine entered in this proceeding on May 30, 1980.

I

THE SUPREME COURT HAS JURISDICTION TO GRANT CERTIORARI IN THIS CASE BASED ON THE RECORD BELOW

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(3) and 28 U.S.C. § 2403(b). The federal question involved is that Maine's guardianship statutes, as construed by Maine courts, render illusory the fundamental right to marry of the mentally disabled in Maine by permitting third parties to have an absolute and arbitrary veto over the exercise of that right, and this veto violates federal constitutional guarantees of equal protection, due process and right of privacy.

Respondents cite Cardinale v. Louisiana, 394 U.S. 437 (1969); Hill v. California, 401 U.S. 797 (1971); Estate of Wilson v. Aiken Industries, 439 U.S. 877 (1978), in support of their claim that this Court is without jurisdiction to

hear this case. These cases are not applicable in the present case as those cases involve situations where the sole federal question argued had never been raised, preserved or passed upon in the state courts below.

Petitioner, at oral argument before the Maine Supreme Judicial Court, argued, as excerpted in Appendix A, that to construe the guardianship provisions to disable a mentally incompetent ward from contracting marriage, without prior guardian or court approval, would violate the ward's federal constitutional rights to marry and of privacy.

Further, during that argument, Justice Glassman stated the following:

> . . .But here we are concerned with a more fundamental issue, and that is, does the statute permit him [ward] to enter into a marital relationship, a marital contract at all without regard to what, in fact, what his capacity may be.

(A-4)

This clearly shows that the Maine Supreme Judicial Court had before it, and was considering, the constitutionality of the statute. This is further supported by the following exchange between Justice Wernick and Mr. Robitzek (Petitioner's counsel):

> "JUSTICE WERNICK: You are saying that, as applied to this case, a marriage indication that the subject the wardship to conclude marriage ipso facto would make this an unconstitutionally applied statute; is that your argument?"
>
> "MR. ROBITZEK: If the statute were interpreted per se to exclude marriage."

(A-7)

Further, Petitioner would refer the Court to her Motion to Dismiss filed at the beginning of the trial and denied by the trial judge, as excerpted in Respondent's brief at page six (6), which clearly shows that the constitutional issues involved herein were raised at the trial level.

Therefore, because the issues were raised and were before the court at both the trial and appellate levels, this Court has jurisdiction to hear the instant case.

II

THE SUPREME COURT HAS INHERENT JURISDICTION IN A CASE WHERE INJUSTICE MIGHT OTHERWISE RESULT SHOULD REVIEW NOT BE GRANTED

Even if this Court were to rule, although Petitioner urges that it does not, that Petitioner raised the federal constitutional issues before this Court for the first time, this Court has jurisdiction to hear the instant case.

This Court has decided federal constitutional issues raised for the first time in proceedings before it. Hormel v. Helvering, 312 U.S. 552 (1941); Glidden Company v. Zdanok, 379 U.S. 530 (1962); Boynton v. Virginia, 364 U.S. 454 (1960).

Even Younie v. State, 281 A.2d 446 (1971), which Respondents cite in their Brief for Respondents in Opposition, recognizes that in rare instances the Supreme Court of the United States will decide federal constitutional questions raised for the first time in proceedings before it.

As Justice Black stated in Hormel v. Helvering, supra:

> "There may always be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court or administrative agency below." See Blair v. Oesterlein Machine Co., 275 U.S. 220, 225.

> "Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy.

> Orderly rules of procedure do not require sacrifice of the rules of fundamental justice." Id. at 557.

Petitioner submits that Justice Black's policies are fully applicable here.

The decision of the Maine Supreme Judicial Court below denies a ward's federal constitutional right to marry, and by doing so, denies Petitioner her fundamental right to marry an adult ward of a guardian. In light of this Court's recent acknowledgment of the need to review family law and mental health matters, it is submitted that Petitioner's case is the type that should be considered on the merits and that certiorari should be granted.

III

THERE EXIST SPECIAL AND IMPORTANT REASONS WHY THE WRIT SHOULD BE GRANTED

Respondents submit that there are no "special and important reasons" for

settling the question presented, in that Maine's guardianship statutes have been repealed and replaced by Maine's new probate laws, and that, therefore, any decisions rendered by this Court on Petitioner's claim would be of limited significance.

The fact that Maine has repealed its former guardianship statutes is irrelevant to the instant case. The Maine Supreme Judicial Court based its decision on the former guardianship statutes, and thus the Ward's and Petitioner's fundamental right to marry rests on the Maine court's interpretation of those guardianship statutes.

Further, the Maine Supreme Judicial Court denied the Ward's and Petitioner's right to marry by interpreting marriage as a contract under the appliable Maine statutes, and thus not allowing an adult ward to contract marriage without consent of his guardian in this instance. A ruling

by this Court on the constitutionality of the Maine statutes in question and the Maine Court's construction thereof, would be of great significance, as it would decide whether any guardian of an adult ward constitutionally may arbitrarily refuse to ratify his ward's marriage. Hence, Petitioner submits that there exist special and important reasons for granting certiorari.

IV

RESPONDENTS' BRIEF CONTAINS IRRELEVANT AND IMMATERIAL MATTER, AND SHOULD BE DISREGARDED AND STRICKEN BY THE COURT

Petitioner submits that Respondents' Brief for Respondents in Opposition contains irrelevant and immaterial matter and should be disregarded and stricken by the Court in accordance with Rule 22.1 and Rule 34.6. Respondents attach an Appendix B in their opposing brief, yet make no mention of an "Appendix B" in the body of

their brief. The purpose of appendices is to supplement the body of the brief, not to add new material.

Respondents, by listing Appendix B, which contains material not referred to in their brief, nor brought before this Court on the Record, brings before this Court irrelevant and immaterial matter, as it cannot be determined for what purpose Respondents chose to list Appendix B. Petitioner submits that Respondents' brief may be disregarded and stricken for a violation of Rule 22.1 and Rule 34.6.

CONCLUSION

Petitioner respectfully submits that this Court has jurisdiction to hear this case, as it involves a federal constitutional attack on a state statute, an issue raised below.

Petitioner further submits that, even if this Court rules that the federal constitutional issue is raised before

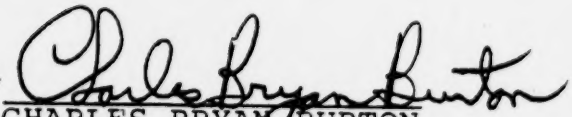
this Court for the first time, this Court has jurisdiction as this is an exceptional case where injustice might otherwise result should review not be granted.

Further, Petitioner submits that there exist special and important reasons why the writ should be granted, as this Court's decision will have the impact of deciding if a guardian may absolutely and arbitrarily veto an incompetent's marriage contract.

Finally, Petitioner submits that Respondents' Brief in Opposition contains irrelevant and immaterial matter, by listing an Appendix B not referred to in the body of the brief, and should be disregarded and stricken by the Court.

The Petition for Certiorari should be granted.

Respectfully submitted,

By 
CHARLES BRYAN BURTON
Attorney for Petitioner
The Plaza Del Sol
4621 North 16th Street
Suite A-110
Phoenix, Arizona 85016

(602) 264-2978

DATED: October 23, 1980.

APPENDIX A

(Excerpts from oral argument on appeal before the Supreme Judicial Court of the State of Maine sitting as the Law Court - pages 24 - 28).

". . . MR. ROBITZEK: I first have to reiterate that I think marriage is a different type of contract if it is a contract at all, from the one represented in the statute, and, secondly, when you are dealing with marriage, what we are dealing with, basically, is the constitutional issue. It is a fundamental right and in order for a statute to take away or deprive a person of a constitutional right, I think that statute has to be subjected to strict scrutiny.

CHIEF JUSTICE McKUSICK: Isn't the right to make business agreements and to take and convey property, isn't that a constitutional protected right?

MR. ROBITZEK: Your Honor, I think

that only rises to constitutional questions if the state attempts to affect contracts that are already in existence.

I believe the guardianship statute would have prospective application for future contracts either business or marriage. I don't know that that -- that purely business contracts would raise this constitutional issue, but it has been recognized by the Supreme Court that marriage, the right of privacy, and some sorts of sexual intimacy, that is a constitutional right.

JUSTICE WERNICK: Are you suggesting that marriage is not a contract, it is a consensual act, and that there is a difference in that regard even though it is loosely called a contract, it does not have the usual overtones and it is really a way of consenting to an arrangement which then creates all kinds of status relationships that have nothing to do with contracts?

MR. ROBITZEK: I would agree with that except that in addition I have to admit that a marriage agreement calls upon the parties for certain obligations, mutual obligations, which, in that sense, also resemble a contract.

JUSTICE GODFREY: Again with reciprocal consent, does it not?

JUSTICE GODFREY: It is a consensual act, and isn't that just the point of 3607, that here is a person who should not be permitted to run around and give consent because he hasn't had the ability to make -- exercise any degree of wisdom in making those agreements?

MR ROBITZEK: Well, I think there are certain Maine cases which deal with the issue of mental capacity to enter into any kind of agreement, and I think what they basically pointed to is the fact that there are these gradations of abilities.

JUSTICE GLASSMAN: That's beside the point. You only get into the question of whether, in fact, this individual had mental capacity if we get by the first issue, and that is does the statute prohibit him from entering into a marital contract without regard to whether, in fact, he may have some kind of capacity to understand what he is doing. Isn't that the place in which the position is different? Clearly, if we get to the second issue, I gather that the presiding justice has made findings as to what this man's capacity is, and then our problem is whether the evidence in the record support those findings.

But here we are concerned with a more fundamental issue, and that is, does the statute permit him to enter into a marital relationship, a marital contract at all without regard to what, in fact, what his capacity may be.

MR. ROBITZEK: Well, as to that, what I have said before, that I don't think that either based on other states' interpretation of similar statutes, or because of the fact that it raises constitutional issue regarding the status of marriage, I don't think that this particular statute should be interpreted so that the term 'contract' includes marriage.

JUSTICE GODFREY: You have no case, have you, in which it has been held constitutionally improper to bar marriages where one of the persons or both is feeble-minded or idiotic?

MR. ROBITZEK: No, I don't have any cases on that, your Honor. The cases that I am referring to would be cases, for example, going back to Skinner vs. Oklahoma, (1923), which I believe started the whole right to privacy concept in this regard, and that was a case in which, I believe, there was mandatory sterilization

of people who were convicted of embezzlement.

JUSTICE GLASSMAN: But this individual's right to privacy as you describe it, has already been invaded, has already been infringed, and the state has intervened and appointed a guardian to run his affairs because there has been a finding and determination, which isn't a fact here, that he was incompetent to handle his own affairs, so, to that extent, this individual's privacy has already been invaded.

Now, do you have any case that says under those circumstances, where there has been a prior legal determination of incapacity to contract, that it is in violation of some constitutional right for the state to also say that that individual who lacks capacity to contract lacks capacity to marry?

MR. ROBITZEK: Your Honor, I

haven't got a case on point here. The case that I would point to, however, is Griswold vs. Connecticut, which stated that the Court should be very wary of dealing in general statutes when there are problems, and I think in terms of the definition that this Court chooses to give to the term of contract, whether it is going to apply to everything you can conceivably call upon, whether business or personal, I think there is a severe danger of getting into that area of --

JUSTICE WERNICK: You are saying that, as applied to this case, a marriage indication that the subject the wardship to conclude marriage ipso facto would make this an unconstitutionally applied statute; is that your argument?

MR. ROBITZEK: If the statute were interpreted per se to exclude marriage.". . .